UNITED STATES PATENT AND TRADEMARK OFFICE

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/039,111	01/04/2002	Venkatesh R. Iyer	NAI1P066/01.308.01	8633

			EXAMINER
758	7590	03/21/2005	SWEARINGEN, JEFFREY R

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ART UNIT	PAPER NUMBER
2145	

DATE MAILED: 03/21/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

	Application No.	Applicant(s)
Office Action Summary	10/039,111	IYER ET AL.
	Examiner	**Art Unit**	
	Jeffrey R. Swearingen	2145	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE _3_ MONTH(S) FROM
THE MAILING DATE OF THIS COMMUNICATION.
- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed
  after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
  Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any
  earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on _04 January 2002_.

2a)☐ This action is **FINAL.**   2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is
    closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) _1-30_ is/are pending in the application.

    4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) _1-30_ is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☒ The specification is objected to by the Examiner.

10)☒ The drawing(s) filed on _04 January 2002_ is/are: a)☐ accepted or b)☒ objected to by the Examiner.

    Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

    Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

    a)☐ All b)☐ Some * c)☐ None of:

      1.☐ Certified copies of the priority documents have been received.

      2.☐ Certified copies of the priority documents have been received in Application No. _____.

      3.☐ Copies of the certified copies of the priority documents have been received in this National Stage
        application from the International Bureau (PCT Rule 17.2(a)).

    * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
    Paper No(s)/Mail Date _multiple_.

4) ☐ Interview Summary (PTO-413)
    Paper No(s)/Mail Date. _____ .
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: _____.

DETAILED ACTION

Drawings

1.   The drawings are objected to because Figures 7-9 are illegible. Corrected drawing sheets in

compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the

application. Any amended replacement drawing sheet should include all of the figures appearing on the

immediate prior version of the sheet, even if only one figure is being amended. The figure or figure

number of an amended drawing should not be labeled as "amended." If a drawing figure is to be

canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the

remaining figures must be renumbered and appropriate changes made to the brief description of the

several views of the drawings for consistency. Additional replacement sheets may be necessary to show

the renumbering of the remaining figures. The replacement sheet(s) should be labeled "Replacement

Sheet" in the page header (as per 37 CFR 1.84(c)) so as not to obstruct any portion of the drawing

figures. If the changes are not accepted by the examiner, the applicant will be notified and informed of

any required corrective action in the next Office action. The objection to the drawings will not be held in

abeyance.

Specification

2.   The disclosure is objected to because of the following informalities:

3.   On page 8, line 6 and page 18, line 26, pseudocode is misspelled.

        Appropriate correction is required.

4.   The use of the trademarks Microsoft Windows NT, Windows 95, IBM OS/2, MAC OS, UNIX,

JAVA, Oracle has been noted in this application. It should be capitalized wherever it appears and be

accompanied by the generic terminology.

Although the use of trademarks is permissible in patent applications, the proprietary nature of the

marks should be respected and every effort made to prevent their use in any manner which might

adversely affect their validity as trademarks.

Claim Rejections - 35 USC § 112

5.   The following is a quotation of the first paragraph of 35 U.S.C. 112:

> The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

6.   Claims 12, 25, 28, and 30 are rejected under 35 U.S.C. 112, first paragraph, as based on a

disclosure which is not enabling. Applicant's claims show that utilizing the state machine as being

representative of the response time is critical or essential to the practice of the invention, but this feature

is not enabled by the disclosure. See *In re Mayhew*, 527 F.2d 1229, 188 USPQ 356 (CCPA 1976).

Applicant has led the Examiner to believe that utilizing a state machine to be "representative of the

response time if the state is in a valid state" is a key feature of the invention, based on page 6, lines 3-16

of the specification. However, the Examiner has been unable to find material in the specification that

explains how having a state machine in a valid state would be useful in calculating response times or

representing response times. The Examiner is additionally unaware of any methods that would allow one

of ordinary skill in the art to use a state machine – a logical definition of the current state or condition of a

machine – to represent a quantitative amount such as a response time.

Claim Rejections - 35 USC § 101

7.   35 U.S.C. 101 reads as follows:

> Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

8.   Claims 14-26 and 28 are rejected under 35 U.S.C. 101 because the claimed invention is directed

to non-statutory subject matter. Claims 14-26 are directed to a computer program product and claim 28 is

directed to a data structure. Neither embodiment is statutory. A computer program product and a data

structure are not necessarily on a computer readable medium, and neither necessarily performs any

function. Computer code must execute on computer hardware and be embodied in a computer readable

medium in order to be considered statutory.

Claim Rejections - 35 USC § 102

9.   The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for

the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless –
>
> (e) the invention was described in (1) an application for patent, published under section 122(b), by
> another filed in the United States before the invention by the applicant for patent or (2) a patent
> granted on an application for patent by another filed in the United States before the invention by the
> applicant for patent, except that an international application filed under the treaty defined in section
> 351(a) shall have the effects for purposes of this subsection of an application filed in the United States
> only if the international application designated the United States and was published under Article 21(2)
> of such treaty in the English language.

10.   Claims 1-6, 8-19, 21-28 and 30 are rejected under 35 U.S.C. 102(e) as being anticipated by Dietz

et al. (U.S. Patent No. 6,839,751).

11.   In regard to claims 1, 14, and 27, Dietz discloses *receiving packet data; aggregating the packet*

data into flows; identifying application verbs and information relating to them in the flows; and storing the

information relating to the application verbs; wherein the information relating to the application verbs is

capable of being used to calculate response times associated therewith. See Dietz, Abstract; column 2,

lines 11-27; column 2, lines 44-46; column 4, lines 14-33; column 5, line 65 – column 6, line 19; column

32, lines 1-51. By this rationale claims 1, 14 and 27 are rejected.

12.   In regard to claims 2 and 15, Dietz is applied as in claims 1 and 14. Dietz further discloses

determining whether the packet data is associated with a new flow. See Dietz, column 4, lines 26-30. By

this rationale claims 2 and 15 are rejected.

13.   In regard to claims 3 and 16, Dietz is applied as in claims 2 and 15. Dietz further discloses *if the packet data is determined to be associated with a new flow, further creating a flow, creating a data structure, and inserting the data structure into the flow.* See Dietz, column 4, lines 16-20; column 9, lines 40-58. By this rationale claims 3 and 16 are rejected.

14.   In regard to claims 4 and 17, Dietz is applied as in claims 3 and 16. Dietz further discloses *identifying a protocol identifier associated with the flow, and determining a number of known application verbs associated with the protocol identifier.* See Dietz, column 6, lines 20-35; column 7, lines 53-65; column 9, lines 27-67; column 11, lines 5-36. By this rationale claims 4 and 17 are rejected.

15.   In regard to claims 5 and 18, Dietz is applied as in claims 4 and 17. Dietz further discloses *allocating memory for the data structure based on the number of known application verbs associated with the protocol identifier.* See Dietz, column 11, lines 30-36. By this rationale claims 5 and 18 are rejected.

16.   In regard to claims 6 and 19, Dietz is applied as in claims 4 and 17. Dietz further discloses *the number of application verbs associated with the protocol identifier is determined utilizing a map.* See Dietz, column 27, line 41 – column 28, line 55. By this rationale claims 6 and 19 are rejected.

17.   In regard to claims 8 and 21, Dietz is applied as in claims 1 and 14. Dietz further discloses *inserting a data structure into the flows.* See Dietz, column 4, lines 16-20; column 9, lines 40-58. By this rationale claims 8 and 21 are rejected.

18.   In regard to claims 9 and 22, Dietz is applied as in claims 8 and 21. Dietz further discloses *populating and updating the data structure with the information.* See Dietz, column 9, lines 40-58. By this rationale claims 9 and 22 are rejected.

19.   In regard to claims 10 and 23, Dietz is applied as in claims 9 and 22. Dietz further discloses *identifying application verbs, determining whether the application verbs are valid, and updating a state machine if it is determined that the application verbs are valid.* See Dietz, column 11, lines 40-58. By this rationale claims 10 and 23 are rejected.

20.   In regard to claims 11 and 24, Dietz is applied as in claims 9 and 22. Dietz further discloses *determining whether a response is complete, and calculating a response time if it is determined that the*

response is complete. See Dietz, column 22, line 61 – column 23, line 10; column 40, lines 26-52. By

this rationale claims 11 and 24 are rejected.

21.   In regard to claims 12 and 25, Dietz is applied as in claims 10 and 23. Dietz further discloses

determining whether the state machine is in a valid state, and utilizing the state machine as being

representative of the response time if it is determined that the state machine is in a valid state. See Dietz,

column 12, lines 55-65; column 13, lines 1-27; column 22, line 61 – column 23, line 6; column 31, lines

25-47. By this rationale claims 12 and 25 are rejected.

22.   In regard to claims 13 and 26, Dietz is applied as in claims 1 and 14. Dietz further discloses *the*

information relating to the application verbs is capable of being used to calculate response times

associated therewith in real-time. See Dietz, column 32, lines 1-51. By this rationale claims 13 and 26

are rejected.

23.   In regard to claim 28, the limitations of this claim are embodied within claims 1, 8, 10 and 12.

Therefore the rejections against these claims are repeated for claim 28. By this rationale claim 28 is

rejected.

24.   In regard to claim 30, the limitations of this claim are embodied within claims 1-6 and 8-12.

Therefore the rejections against these claims are repeated for claim 30. By this rationale claim 30 is

rejected.

Claim Rejections - 35 USC § 103

25.   The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness

rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set
> forth in section 102 of this title, if the differences between the subject matter sought to be patented and
> the prior art are such that the subject matter as a whole would have been obvious at the time the
> invention was made to a person having ordinary skill in the art to which said subject matter pertains.
> Patentability shall not be negatived by the manner in which the invention was made.

26.   Claims 7, 20 and 29 are rejected under 35 U.S.C. 103(a) as being unpatentable over Dietz.

27.   In regard to claims 7 and 20, Dietz is applied as in claims 6 and 19. Dietz does not explicitly state the use of RMON. Rather, Dietz describes that avoiding the use of RMON will improve performance in the system. See Dietz, column 34, lines 61-67. It would be obvious to one of ordinary skill in the networking art to use RMON with Dietz since Dietz has stated that it has found a way to avoid working with RMON in order to improve system performance. Therefore, according to Dietz, the use of RMON would actually be an older technological variant on the Dietz invention. By this rationale, claims 7 and 20 are rejected.

28.   In regard to claim 29, the limitations in this claim are embodied within claims 1, 4, 5, 6 and 7. Therefore the rejections against these claims are repeated for claim 29. By this rationale claim 29 is rejected.

Conclusion

29.   The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

30.   Ross, U.S. Patent No. 6,477,571.

31.   de la Salle, U.S. Patent No. 6,144,961

32.   Forman et al., U.S. Patent No. 6,178,449

33.   Temoshenko et al., U.S. Patent No. 5,331,574

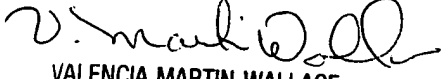34.   Guheen et al., U.S. Patent No. 6,473,794

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jeffrey R. Swearingen whose telephone number is (571) 272-3921. The examiner can normally be reached on M-F 8:30-5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Valencia Martin-Wallace can be reached on 571-272-6159. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application

Information Retrieval (PAIR) system. Status information for published applications may be obtained from

either Private PAIR or Public PAIR. Status information for unpublished applications is available through

Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should

you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC)

at 866-217-9197 (toll-free).

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